

COMMUNITY
ASSOCIATIONS
INSTITUTE

The nation's voice for condominium, cooperative and homeowner associations

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December 23, 1997

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DEC 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: In the Matter of: Telecommunications Services and Inside Wiring:
Customer Premises Equipment (CS Docket No. 95-184). In the Matter of:
Implementation of the Cable Television Consumer Protection and Competition
Act of 1992: Cable Home Wiring (MM Docket No. 92-260).

Dear Mr. Caton:

Pursuant to the *Second Further Notice of Proposed Rulemaking* issued October 17, 1997, in the above-captioned proceeding, the Community Associations Institute ("CAI") submits an original and nine copies of its Comments.

CAI appreciates the opportunity to participate in this proceeding.

Sincerely,

Rodney D. Clark
Vice President
Government and Public Affairs

Enclosures

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DEC 23 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Telecommunications Services)	CS Docket No. 95-184
Inside Wiring)	
)	
Customer Premises Equipment)	
)	
)	
In the Matter of)	
)	
Implementation of the Cable)	
Television Consumer Protection)	MM 92-260
and Competition Act of 1992)	
)	
Cable Home Wiring)	

Comments of the Community Associations Institute

SUMMARY

Pursuant to the *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) issued October 17, 1997, in the above-captioned proceeding, the Community Associations Institute (“CAI”) submits the following Comments.

CAI supports the elimination of barriers to competition in the provision of telecommunications services and enthusiastically welcomes the proliferation of new multichannel video programming distributors (“MVPDs”). CAI eagerly anticipates the growth of additional competition among multiple MVPDs and believes that such competition is best fostered through a free and open marketplace that operates with minimal governmental intrusion. In its *Second Further Notice*,

the FCC has sought advice concerning several methods of promoting competition among MVPDs. While some of these measures may increase competition, they should be narrowly drafted to cause minimal intrusion into free market processes.

I. ABOUT THE COMMUNITY ASSOCIATIONS INSTITUTE

Founded in 1973, CAI is the national voice for 32 million people (one out of every eight) who live in more than 160,000 community associations of all sizes and architectural types throughout the United States. Community associations include condominium associations, cooperatives, and planned communities. CAI represents this extensive constituency on a range of issues including taxation, bankruptcy, insurance, private property rights, telecommunications, fair housing, electric utility deregulation, and community association manager credentialing.

In addition to individual homeowners, CAI's multidisciplinary membership encompasses community association managers and management firms, attorneys, accountants, engineers, builders/developers, and other providers of professional products and services for community homeowners and their associations. CAI members participate actively in the public policy process through 58 local Chapters and 24 state Legislative Action Committees.

II. THE FCC SHOULD NOT LIMIT THE DURATION OF EXCLUSIVE SERVICE CONTRACTS.

In the *Second Further Notice*, the FCC requests comment on the effectiveness of placing a cap on the duration of exclusive service contracts.¹ CAI discourages this approach. Although there

¹ *Second Further Notice*, paragraph 259.

are certainly occasions where incumbent monopolistic cable companies have leveraged their position as the single source of video services to force community associations and their residents into unfavorable or exclusive contracts, a general cap on all exclusive agreements is not an appropriate remedy.² The option of an exclusive contract is an important aspect of the free market as well as an established right of property ownership. Despite circumstances where MDU owners must accept unbalanced agreements because of an incumbent provider's market force, certain exclusive agreements ensure the availability of telecommunications services and advance the development of competition, as the FCC points out in the *Second Further Notice*.³

Although the paradigm of today's marketplace is shifting to favor the availability of multiple providers in lieu of exclusive arrangements, community associations and their residents are occasionally unable to attract certain telecommunications providers at all or secure favorable rates for residents without the option of entering into exclusive agreements. Without these options, some community associations would be unable to obtain cable service, or affordable rates, because the provider determined the profit potential to be inadequate to justify the necessary investment. An exclusive arrangement that guarantees a return for the provider is occasionally the only means to securing service for residents, and such an option should remain available.

² While the *Second Further Notice* refers to MDU owners, CAI's comments will generally reference community associations, which are constructed in many different legal and architectural forms, since all the issues discussed herein pertain to all condominiums, cooperatives and planned communities regardless of whether they are built as MDU buildings. CAI again encourages the FCC to apply its inside wiring rules uniformly to all community associations.

³ *Second Further Notice*, paragraph 258.

Moreover, it is worthwhile to recognize that an exclusive agreement in a competitive environment may also return significant benefits to residents who are able to secure high quality services and lower prices because of the prospect of an exclusive contract. In fact, homeowners may actually receive more benefits from an exclusive contract in a competitive environment than they might otherwise in a monopolistic arena since providers would need to compete vigorously to secure any such agreement – competition that does not exist when only one provider is available. While the evolution of competition will likely dictate that any such arrangement is for a limited duration, the exclusive contract as a tool to deliver favorable services and prices to residents should not be restricted by limiting the terms of such agreements.

III. EARLY TERMINATION OPTIONS FOR EXCLUSIVE CONTRACTS WOULD BENEFIT COMMUNITY ASSOCIATION RESIDENTS

The FCC requests comment on whether MDU owners should be able to terminate exclusive service contracts early in exchange for compensating the incumbent provider for unrecovered investment costs.⁴ CAI supports this proposal, to be offered in conjunction with the FCC’s “fresh look” option,⁵ since it would provide community associations and their residents additional flexibility to take advantage of competitive telecommunications services while ensuring that incumbent providers under contract are able to recover their investment costs. Agreement on reasonable investment costs should be determined by negotiation between the provider and the community association in a manner similar to that outlined in the recent inside wiring rule.

⁴ *Second Further Notice*, paragraph 260.

⁵ *Second Further Notice*, paragraph 264.

IV. THE FCC SHOULD ADOPT A “FRESH LOOK” FOR ALL TYPES OF EXCLUSIVE CONTRACTS

The FCC requests comment on whether it should adopt a “fresh look” for perpetual exclusive contracts.⁶ CAI supports the “fresh look” option and encourages the FCC to make it available to community associations on an association-by-association basis for all exclusive contracts. Offering a “fresh look” for exclusive service contracts will promote competition by permitting community associations to select alternative MVPDs to either replace or compete with the incumbent MVPD. As the early termination option should be available in situations where the provider has not recovered its costs, a community association should secure the option to take a “fresh look” at the competitive marketplace the earlier of: 1) when the provider has recovered its costs; or, 2) after the contract has been in place a reasonable time, such as the average period for a provider to recover its investment costs. If dependable data on cost recovery is unavailable, CAI suggests that a reasonable time period is 3-4 years. Such a time certain threshold would ensure that providers do not prohibit community associations from considering a “fresh look” by constantly changing the accounting methods for cost recovery. It is appropriate that the community association make the “fresh look” election since it is governed by residents who are best able to determine the needs of the property.

The FCC requests comment on the timing of a “fresh look” and proposes that it apply during a 180-day window after the issuance of the final rule.⁷ A “fresh look” should not be limited to this short period but should be available as a flexible option to community associations who can invoke it when they determine that a critical mass of competition among video services providers

⁶ *Second Further Notice*, paragraph 264.

⁷ *Second Further Notice*, paragraphs 264, 265.

exists in their area. A one-time “fresh look” following the issuance of the final rule would discriminate against those associations in areas where competition among video providers does not presently exist.

Moreover, it is important that any contract voided as a result of a “fresh look” encompass all aspects of the agreement including right of entry clauses which regularly extend beyond the life of the contract.⁸ To be truly effective, a “fresh look” must address such matters so other providers may have access to the property. The final rule should clarify that right of entry provisions will be terminated along with the exclusive service agreement voided under a “fresh look.”

CAI also requests that the FCC extend the “fresh look” option to all types of community associations including condominiums, cooperatives and planned communities – all of which share the same experiences with regards to video service providers and exclusive contracts.

V. THE FCC SHOULD PREEMPT MANDATORY ACCESS STATUTES

In the *Second Further Notice*, the FCC requests comment on whether its decision not to preempt state mandatory access statutes will effectively bar many MVPDs from entering the marketplace or enforcing exclusive agreements that would advance competition.⁹ The FCC is correct to revisit this question. Mandatory access statutes favor the incumbent provider and are inherently unfair to community association residents and all alternative MVPDs. Mandatory access statutes create perpetual rights of entry for the first MVPD to the exclusion of all others and effectively

⁸ See Attachments.

⁹ *Second Further Notice*, paragraph 262.

deny community associations access to new and innovative telecommunications services. Such laws inhibit competition, violate associations' property rights, and hinder consumer choice. The FCC should preempt all existing mandatory access laws.

VI. THE FCC SHOULD EXTEND ITS CABLE INSIDE WIRING RULES TO ALL MVPDS

The FCC also requests comment on whether the recently adopted cable inside wiring rule should apply to all MVPDs.¹⁰ CAI supports this extension, which would create a uniform set of rules and facilitate the ability of community associations and others to effectively negotiate and execute additional agreements with multiple providers. A uniform set of rules for all MVPDs will level the competitive playing field and expedite the development of integrated telecommunications networks and infrastructures to deliver varied and competing services to community association residents.

VII. THE FCC SHOULD PROMOTE THE SIMULTANEOUS USE OF HOME RUN WIRING

The *Second Further Notice* requests input into DirecTV's proposal for several MVPDs to share home run wiring.¹¹ CAI encourages the FCC to study this option carefully, as there are many potential advantages to sharing home run wiring.

¹⁰ *Second Further Notice*, paragraph 267.

¹¹ *Second Further Notice*, paragraph 271.

In this proceeding and others,¹² CAI has always supported the simultaneous use of wiring by multiple MVPDs to facilitate and expedite the delivery of services while minimizing the amount of wiring on common property. Simultaneous use of home run wiring will permit alternate MVPDs to provide service to community association residents without damaging common property. Community associations and residents will be more willing to permit the entry of alternate MVPDs when such disruption is limited. The simultaneous use of home run wiring will decrease the challenges of installing new wiring in filled conduits and moldings and should increase competition among providers because competing services will be more readily available. Furthermore, residents should have greater choices and better prices because of the decreased infrastructure costs of duplicative wiring.

CAI recognizes that the simultaneous use of home run wiring may involve certain Fifth Amendment issues pertaining to takings and understands such matters must be successfully resolved. While CAI takes no position on these specific issues, CAI does encourage the FCC to further study the technological, practical, legal, and constitutional implications of such a proposal since the simultaneous use of wiring could simplify and expedite the delivery of competitive telecommunications services to residents.

¹² See CAI's Comments and Reply Comments in the consolidated proceeding of *In the Matter of: Preemption of Local Zoning Regulations of Satellite Earth Stations: IB Docket No. 95-59; In the Matter of: Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services: CS Docket No. 96-83*. In that proceeding, CAI supported the simultaneous use of wiring to provide access to cable and satellite services over the same infrastructure.

VIII. THE FCC SHOULD PROHIBIT CABLE PROVIDERS FROM ENFORCING CLAIMS
AGAINST COMMUNITY ASSOCIATIONS FOR VIOLATIONS OF EXCLUSIVE
CONTRACTS WHEN INDIVIDUAL RESIDENTS INSTALL COMPETITIVE SATELLITE
AND OTHER ANTENNA SERVICES UNDER SECTION 207 OF THE
TELECOMMUNICATIONS ACT OF 1996

By adhering to the FCC's actions pertaining to Section 207 of the Telecommunications Act of 1996 which allow residents to install satellite dishes and other antennas on individually owned and exclusive use area property,¹³ community associations are at risk from lawsuits and damage claims for violating the exclusivity provisions of existing arrangements with service providers. The FCC should explicitly state that community associations are not in breach of exclusive service contracts when individual residents install antennas pursuant to 47 C.F.R. Section 1.4000.

CONCLUSION

The competitive marketplace for video programming is changing rapidly. As more MVPDs providing different video programming choices enter the marketplace, competition for subscribers will certainly increase. The FCC, in attempting to assist the growth of this competitive process, should weigh any potential marketplace intervention carefully. While early termination and "fresh look" options are appropriate for exclusive contracts executed with monopolistic providers prior to the growth of competition, a general prohibition or cap on exclusive agreements is inappropriate.

A "fresh look," at the MDU owner's election, will permit community associations and others to survey the marketplace once a critical mass of competitive providers is available to service

¹³ *Report and Order, In the Matter of: Preemption of Local Zoning Regulations of Satellite Earth Stations: IB Docket No. 95-59; In the Matter of: Implementation of Section 207 of the Telecommunications Act of 1996: Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Services: CS Docket No. 96-8, FCC 96-328.*

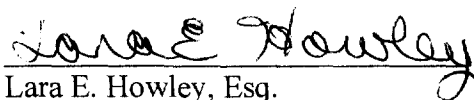
residents. To further promote competition, the FCC should preempt state mandatory access statutes, which serve an incumbent provider to the detriment of alternative MVPDs, community associations, and their residents. Preempting these statutes will permit all MVPDs the right to compete for access to community associations and expand the availability and range of video services. The FCC should also study the possibility of simultaneous use of cable home run wiring by multiple MVPDs, since this would allow community association residents access to a greater range of services with minimal intrusion onto common property.

CAI appreciates the opportunity to submit Comments in this proceeding.

Respectfully submitted,



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BROADBAND EASEMENT AND RIGHT OF ENTRY AGREEMENT

THIS BROADBAND EASEMENT AND RIGHT OF ENTRY AGREEMENT (this "Access Agreement") dated as of July, 26, 19 96 is made and entered into by and between TCLEFshl ("Operator"), and ("Owner"), effective as of the date of Operator's execution of this Access Agreement set forth below.

RECITALS

A. Owner owns the located at (the "Premises"), consisting of 40 units plus any units added or constructed in the future. A legal description of the Premises is attached hereto as Exhibit A.

B. Operator owns and operates a cable television system in (the "System").

C. Owner and Operator desire to provide for Operator's access to the Premises in order to install the equipment necessary to provide multi-channel video programming and any other services that it may lawfully provide (the "Services") to the Premises, on the terms and conditions provided herein.

AGREEMENTS

In consideration of the mutual promises and conditions herein set forth, Owner and Operator agree as follows:

1. **Ownership of the Premises.** Owner represents and warrants that it is the record holder of fee title to the Premises.

2. **Easements; Access.** Owner hereby grants, bargains and conveys to Operator an irrevocable easement in gross across, under and over the Premises as necessary or desirable for the routing, installation, maintenance, service and operation of the Equipment (as hereinafter defined), and the marketing and provision of the Services. Owner agrees that the Operator may from time to time enter into various agreements or arrangements with its approved lessees, agents or authorized vendors (collectively, the "Agents") and access to, and entry upon, the Premises granted by Owner pursuant to this Section shall extend to such Agents. Owner shall cause its designated representatives to accompany employees or contractors of Operator into any unoccupied residential unit for the purpose of wiring such residential unit, if such wiring is required. After the Premises have been wired for the provision of Services, Owner shall provide Operator's employees and contractors access to the Premises at reasonable times for the exercise of its easement rights hereunder. In addition to the other rights granted by Owner hereunder, upon termination of this Access Agreement, Owner hereby grants, bargains and conveys to Operator the right to enter the Premises in order to remove the Equipment from the Premises if Operator so desires.

3. Equipment. Operator may install, maintain, service, operate and upgrade on the Premises coaxial cable and/or fiber optic line, internal wiring, amplifiers, converters and other equipment necessary for the provision of the Services (the "Equipment"). The Equipment shall at all times be owned by, and remain the property of, Operator, whether or not attached to or incorporated in the Premises, and neither Owner nor any resident of the Premises shall have or obtain any right, title or interest therein. The Equipment does not constitute a fixture of the Premises. Owner shall in no way attach to or use in any manner the Equipment or any portion thereof. Owner shall have no obligation to service or maintain the Equipment.

4. Type of Account; Provision of Services.

- (a) Operator shall provide the Services to the Property as follows:
(Check one)

(☒) Individual Rate Account: Operator, or the Agents, shall market and contract with individual residents of the Premises for all Services, and all arrangements for connecting, serving and billing residents of the Premises for the Services shall be made directly between Operator and such residents.

(☐) Bulk Rate Account: Operator shall market and contract with the Owner for certain of the Services in accordance with a Bulk Rate Agreement to be signed by Operator and Owner. Operator, or the Agents, shall market and contract with individual residents of the Premises for all other Services, and all arrangements for connecting, serving and billing residents of the Premises for such Services shall be made directly between Operator or the Agents, and such residents.

X (b) The Services shall initially be provided as set forth above. During the term of this Access Agreement, the method of billing may be changed (i.e., from a bulk rate to an individual rate account and visa versa) without in any way affecting the validity of this Agreement.

5. Damage to the Premises or Equipment; Indemnification; Survival.

(a) Operator shall repair any damage to the Premises caused by Operator, its employees, or the Agents. Operator shall hold harmless and indemnify Owner from and against any and all losses or damages (including reasonable attorneys' fees) resulting from Operator's or the Agents' installation, maintenance, service, removal or operation of the Equipment or any other equipment of Agent, except loss or damage arising from any negligent or intentional act or omission of Owner or its agents or employees, or any resident of the Premises.

(b) Owner shall repair any damage to the Equipment caused by Owner, its agents, or employees, or any resident of the Premises. Owner shall hold harmless and indemnify Operator from and against any and all losses or damages (including reasonable attorneys' fees) arising from or with respect to (i) any negligent or intentional act or omission of Owner or its agents or employees, or any resident of the Premises, or (ii) any claim, demand, legal proceeding or similar action instituted by any person or entity providing multichannel video programming or

FORM AGREEMENT REVISED 09/11/96

other services similar in nature to the Services provided to the Premises as of or prior to the date of this Access Agreement, or its successor or assign.

(c) The rights and obligations set forth in this Section 5 and the last sentence of Section 2 shall survive termination of this Access Agreement.

6. Insurance. Operator shall obtain and maintain in full force and effect throughout the Initial Term and any Renewal Term, with reputable insurers qualified to do business in the state or states in which the Premises are located, general liability insurance in amounts of not less than \$500,000 for injury to any one person, \$500,000 aggregate for any single occurrence, and \$500,000 for property damage.

X 7. Other Systems. In consideration of Operator's investment in the Equipment and other valuable consideration, for a period of time ending upon the earlier of (a) the date of termination of this Access Agreement and (b) the 10th anniversary of the effective date of this Access Agreement, Owner shall not, without the prior written consent of Operator, operate or install or permit the operation or installation of any other antenna, receiver, converter, cable or other signal amplification system on the Premises for use in connection with television or radio equipment. ←

8. Force Majeure. Operator shall not be deemed to be in breach of this Access Agreement if it is unable to perform its obligations hereunder as a result of the occurrence of an event of "force majeure," which shall include, but not be limited to, acts of God, acts of the government of the United States or of any state or political subdivision thereof, strikes, civil riots or disturbances, fire, floods, explosions, earthquakes, wind, storms, hurricanes, lightning, other similar catastrophes or other causes beyond Operator's control. X

9. Term; Termination. This Access Agreement shall be effective on the date hereof and continue for a period of 10 years (the "Initial Term"), and thereafter shall automatically continue for 10 additional terms, each additional term consisting of the same number of years as the Initial Term (each a "Renewal Term"), unless either party gives the other written notice of non-renewal at least six months prior to the end of the Initial Term or then-effective Renewal Term, as appropriate. All notices which are given pursuant to this Section shall be sufficient in all respects if given in writing and delivered personally, by telecopy, by overnight courier, or by registered or certified mail, postage prepaid, to the receiving party at the respective address set forth below their signatures on the signature page to this Access Agreement or to such other address as such party may have given notice to the other pursuant hereto. Notice shall be deemed given on the date of delivery, in the case of personal delivery, on the date specified in the telecopy confirmation, in the case of telecopy, or on the delivery or refusal date, as specified on the return receipt, in the case of overnight courier or registered or certified mail. ✓

10. Successors to Both Parties; Related Parties to Operator. The benefits and obligations of this Access Agreement shall inure to and be binding upon the successors, assigns, heirs, and personal representatives of Operator and Owner. If Owner shall sell, transfer or encumber the Premises, such sale or encumbrance shall be subject to this Access Agreement, which touches and concerns and runs with the land. The rights and obligations of Operator under

this Access Agreement may be enjoined, enforced or performed, as the case may be, by Operator and any other entity controlling, controlled by or under common control with Operator.

11. **Legal Actions.** If legal action is necessary to enforce any provision of this Access Agreement or any agreement relating hereto, the prevailing party in such action shall be entitled to recover its costs and expenses of such action, including reasonable attorney's fees. Owner acknowledges that the breach by Owner of any of its obligations under this Access Agreement cannot be reasonably or adequately compensated in damages in any action at law and that a breach of this Access Agreement by Owner will cause Operator irreparable injury and damage; Owner, therefore, expressly agrees that in the event of a breach or threatened breach of this Access Agreement, Operator shall be entitled to injunctive and other equitable relief against Owner. Resort to equitable relief shall not in any way be construed as a waiver of any other rights or remedies which Operator may have for damages or otherwise.

12. **Confidentiality.** Owner and/or the person signing on behalf of the Owner hereby warrant, represent and covenant that he or she shall not, directly or indirectly, disclose to any third party the material terms of this Access Agreement including, but not limited to, the financial terms agreed to between Owner and Operator.

13. **Authorizations.** The person signing on behalf of the Owner represents that he/she is the owner of the Premises or the authorized agent of Owner, with full authority to bind Owner to the terms and conditions of this Access Agreement. This Access Agreement shall not be binding upon Operator until signed by an authorized representative of Operator.

14. **Miscellaneous Provisions.** This Access Agreement supersedes any and all other access agreements, either oral or written, between the parties hereto. This Access Agreement contains the entire agreement between Owner and Operator and may not be amended except by an agreement in writing signed by the parties. Whenever possible, each provision of this Access Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Access Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Access Agreement.

The parties have executed this Access Agreement by their duly-authorized representatives.

OPERATOR:

By: _____

Name: _____
(Print or type)

Title: _____

Address: _____

Attn: _____

Telecopy: _____

09/17/96 14:45

P. 006

52.

FORM AGREEMENT REVISED 09/11/94

STATE OF _____	}	m.
COUNTY OF _____		
This instrument was acknowledged before me on _____, 199_, by _____		
of _____		
Given under my hand and seal of office.		
My commission expires:	_____	
	Notary Public	
	Title (and Rank)	

OWNER:

By: _____
Name: _____
(Print or type)
Title: _____
Address: _____

Attn: _____
Telecopy: _____

STATE OF _____	}	m.
COUNTY OF _____		
This instrument was acknowledged before me on _____, 199_, by _____		
of _____		
Given under my hand and seal of office.		
My commission expires:	_____	
	Notary Public	
	Title (and Rank)	

09/17/96

14:45

P. 007

53

FORM AGREEMENT REVISED 09/11/94

EXHIBIT A

To
Broadband Easement and Right of Entry Agreement
dated

between

and

Legal Description

**CABLE TELEVISION SERVICE AGREEMENT
RIGHT OF ENTRY
APARTMENTS, CONDOMINIUMS, TOWNHOMES**

This Agreement is made this _____ day of _____, 1994,
between WARNER CABLE COMMUNICATIONS, INC. hereinafter referred to as OPERATOR and _____
hereinafter referred to as GRANTOR:

1. DEFINITIONS

A. **CATV System:** shall mean that system of telecommunications cables and ancillary mechanical and electronic equipment built by or on behalf of OPERATOR, located at the Property Site, Village Place Townhomes, and used or intended for the transmission, receipt and internal distribution of cable television, telecommunication services, and other services offered or to be offered by OPERATOR.

B. **Property Site:** shall mean the real property and improvements located thereon, as well as all rights appurtenant thereto, owned or enjoyed by GRANTOR as described by street address and/or legal description elsewhere in this Agreement. Property Site shall further include such improvements or rights or contiguous real property that may be acquired or constructed by GRANTOR after the effective date of this contract.

C. **Bulk Service:** shall mean a discounted rate given to GRANTOR for cable TV services.

D. **Right-of-Entry (ROE):** shall mean the delivery of cable TV service to a Property Site in which the individual tenant or homeowner pays the monthly service fees at the full retail rate.

2. TERM

The term of this Agreement shall commence on the date service is activated and shall remain in full force and effect for ten (10) years from the date hereof and shall be automatically renewed for additional five (5) year terms either party notifies the other in writing thirty (30) days prior to expiration. At the end of the additional five year extension of the Agreement, OPERATOR shall have the right to negotiate additional extensions of the Agreement on a right of refusal basis. ←

3. GENERAL CONDITIONS

a) GRANTOR warrants that it is the fee simple Owner of the Property Site or that it is the duly authorized representative of the Owner.

b) GRANTOR hereby grants to OPERATOR the exclusive right to install and maintain a CATV System upon the Property Site and without charge agrees to provide OPERATOR adequate space upon the Property Site for the installation and operation of its CATV System. GRANTOR hereby grants unto OPERATOR an easement and right of way upon, under, over and across the Property Site for the purpose of the placing, construction, operation, repair, maintenance, rebuilding, replacing, or removing, of the CATV System and for the furtherance of all other rights, duties and obligations granted the OPERATOR in this contract. GRANTOR hereby agrees that all satellite dishes which may be located upon the property will be disabled.

**CABLE TELEVISION SERVICE AGREEMENT
BULK SERVICE CONTRACT**

DATE: 6/1/94

05/11/94 99031604 R005415 \$ 20.00

DEFINITIONS

Operator: shall mean WARNER CABLE COMMUNICATIONS, INC., its related companies, successors, assigns, representatives, agents, and employees, unless specifically otherwise defined in another provision of this contract.

Grantor: shall mean [REDACTED]

CATV System: shall mean that system of telecommunications cables and ancillary mechanical and electronic equipment built by or on behalf of OPERATOR, located at the Property Site, [REDACTED], and used or intended for the transmission, receipt and internal distribution of cable television, telecommunication services, and other services offered or to be offered by OPERATOR.

Property Site: shall mean the real property and improvements located thereon, as well as all rights appurtenant thereto, owned or enjoyed by GRANTOR as described by street address and/or legal description elsewhere in this Agreement. Property Site shall further include such improvements or rights or contiguous real property that may be acquired or constructed by GRANTOR after the effective date of this contract.

Bulk Service: shall mean a discounted rate given to GRANTOR for cable TV services.

Right-of-Entry (ROE): shall mean the delivery of cable TV service to a Property Site in which the individual tenant or homeowner pays the monthly service fees at the full retail rate.

TERM

The term of the Bulk portion of this Agreement shall commence on the date of the first monthly billing and end Five years from the above date, unless specifically renewed or cancelled with 90 days' written notice at the end of the Bulk term. The Bulk payments of this contract shall remain in force at the month-to-month rate. If the bulk terms and payments are terminated at the end of this Agreement, this property will automatically convert to a Right-of-Entry for an additional ten year period. ←

GENERAL CONDITIONS

a) GRANTOR warrants that it is the fee simple owner of the Property Site or that it is the duly authorized representative of the Owner.

b) GRANTOR hereby grants to OPERATOR the exclusive right to install and maintain a CATV System upon the Property Site and without charge agrees to provide OPERATOR adequate space upon the Property Site for the installation and operation of its CATV System. GRANTOR hereby grants unto OPERATOR an easement and right of way upon and across the Property Site for the purpose of the placing, construction, operation, repair, maintenance, rebuilding, replacing, or removing, of the CATV System and for the furtherance of all other rights, duties and obligations granted the OPERATOR in this contract. GRANTOR hereby agrees that all satellite dishes and signal which may be located upon the property will be disabled on or before the date that OPERATOR provides service.

c) The CATV System made subject of this contract, if installed by OPERATOR (its agents or subcontractors) shall remain the property of OPERATOR. OPERATOR agrees to provide normal maintenance and repairs to OPERATOR owned equipment only at its expense. OPERATOR may terminate this contract if it experiences excessive damages to its CATV System located on Property Site, regardless of fault.

d) OPERATOR agrees to provide cable television service to the Property Site on a bulk rate basis. The bulk rate shall be N/A of OPERATOR'S usual single family dwelling residential service charge as set forth and published and charged by OPERATOR from time to time, which GRANTOR acknowledges is subject to change. GRANTOR further understands that it is eligible for this bulk rate so long as service is granted to all units on the Property Site and is based on the total number of units upon the Property Site, whether or not individual residents choose to use OPERATOR'S service and whether or not such units are in fact occupied.

e) The level of service to be provided by OPERATOR and the initial charges therefore are:
All rates are plus current sales tax and city access fees.

LEVEL OF SERVICE: Expanded Service
181 Units

INITIAL CHARGES: \$ SEE ATTACHED SCHEDULE which sum is due and payable monthly in advance, by or before the 15th day of each and every month throughout the term of this Agreement. Charges unpaid on the 15th of the month shall accrue interest thereafter at the rate of 18% per year.

f) The rate set forth in (e) shall remain in effect for a period of 60 months from the date GRANTOR is first billed by OPERATOR. Commencing the 61st month, the rate may be adjusted upon 30 days written notice.

g) GRANTOR may bill its residents for the service provided GRANTOR by OPERATOR pursuant to this Agreement in any amount that does not exceed the charge made by OPERATOR directly to individual residents of units similar to those living upon the Property Site. OPERATOR agrees to provide GRANTOR with such billing information, upon request, which information, when provided, shall be conclusive proof of such rate.

h) GRANTOR agrees to pay OPERATOR, on demand, all sums associated with repair of the CATV System not attributable to normal maintenance and repair. GRANTOR further agrees to pay OPERATOR on demand for any damages to the CATV System caused by acts or omissions of GRANTOR, its agents, customers, employees, invitees, trespassers.

i) If, for any reason, this Agreement is terminated due to default by GRANTOR, the following conditions shall prevail: (1) OPERATOR must notify GRANTOR the Agreement is to be terminated. (2) Such writing shall set forth the causes and reasons for the proposed termination and shall state that the Agreement is to be terminated within 90 days. (3) Further, upon the termination of this Agreement, OPERATOR shall have the right to enter premises and any adjacent or contiguous real property and building(s) owned by GRANTOR and remove all the exterior portions of the equipment, including taps, amplifiers, pedestals, converters, splitters or any other cable hardware construed as exterior cable plant. Provided however, nothing in this paragraph shall limit any other right granted to OPERATOR in this Contract, nor shall anything contained in this paragraph be construed as giving GRANTOR the right to terminate this Contract prior to its expiration as originally agreed upon hereinabove.

j) If GRANTOR fails to pay any fees for cable services and if such fees remain unpaid or are not received by OPERATOR by the 15th day of the month for which such fees are due, OPERATOR then shall have the right to terminate all cable services at the Property Site. If the cable service is terminated due to non-payment by GRANTOR, reconnection of the cable service shall only be accomplished if GRANTOR pays reconnection charges, and all past due amounts, plus a deposit for future services in an amount equivalent to two (2) months' charges. Additionally, if cable service is terminated due to non-payment by GRANTOR, GRANTOR hereby agrees to indemnify and hold OPERATOR harmless from and against any and all losses, costs, expenses, liabilities and/or damages (including reasonable counsel fees) which OPERATOR may hereinafter incur, suffer or be required to pay to any individual or entity arising out of or relating to the discontinuance of such service.

k) GRANTOR warrants to OPERATOR that any contract for cable TV service with any other company has been terminated by GRANTOR pursuant to the terms of said contract. GRANTOR acknowledges that OPERATOR would not consent to provide cable television to the residents of GRANTOR without assurance by GRANTOR that the contract between GRANTOR and said Cable Television company was in fact terminated.

l) GRANTOR agrees to indemnify and hold OPERATOR harmless from any and all claims, demands, judgments and expenses, including costs of defense and attorney fees incurred by OPERATOR as a result of any claim, demand, legal proceeding or the like instituted by any cable television company, its successors or assigns any cable television company arising out of the termination of cable television service from any cable television company. This indemnification shall survive any termination of the contract between GRANTOR and OPERATOR.

DEFAULT

a) In the event that GRANTOR shall default upon any of the conditions or obligations set forth in this contract, or any addendum hereto, or any other Agreement between OPERATOR and GRANTOR, then OPERATOR at its sole option may:

- 1) discontinue service to the Property Site; and/or
- 2) discontinue service to the GRANTOR; and/or
- 3) remove its CATV System from the Property Site; and/or
- 4) exercise such other remedy as may be allowed by law or contract;

In addition, GRANTOR shall pay OPERATOR, upon demand;

- 1) all unreimbursed construction costs; and
- 2) the remaining total of service charges that would have been paid to OPERATOR by GRANTOR had no breach occurred. The parties hereto agree and acknowledge that an exact calculation of the damages suffered by the OPERATOR (under such conditions) is difficult, if not impossible to ascertain due to OPERATOR'S accounting methods and OPERATOR cannot determine that actual cost of providing its service to GRANTOR and therefore cannot compute its profits on the services made subject of this contract. GRANTOR agrees that such percentage will be reasonable and just compensation for such breach and promises to pay such sum as liquidated damages and not as a penalty; and
- 3) reasonable attorneys fees and costs incurred.
- 4) reconnection fee if service is to be restored.

MISCELLANEOUS

a) Installation of cable drops to each unit will be done in a workmanlike manner and in accordance with cable industry standards with the cable attached to the exterior of the building and in some cases will be visible to the resident.

b) The CATV System shall not be used for any purpose other than the delivery, receipt and distribution of OPERATOR'S services. Any other use by GRANTOR is agreed by GRANTOR to cause OPERATOR irreparable damage for which no remedy at law will fully compensate OPERATOR. Accordingly, GRANTOR understands and agrees that breach of this paragraph will allow OPERATOR the use of injunctive relief.

c) OWNER and OPERATOR hereby agrees that governmental laws, regulations or rules, whether formulated or imposed by a legislative, regulatory or judicial body, regulate the operation of OPERATOR'S business and, to the extent that there exists any conflict between the specific terms of this Agreement and such laws, regulations or rules, the latter supersede the provisions of this Agreement. ←

d) GRANTOR shall be liable to OPERATOR for any damages to OPERATOR'S cable system and plant resulting from the negligence or intentional acts of GRANTOR, its employees, tenants, agents or subcontractors.

e) OPERATOR shall have the right to go upon the property to solicit, for any or all of its cable services or other products.

f) The cost of providing such fully operational CATV System shall be borne solely by the OPERATOR and GRANTOR shall not be responsible for any of said cost of providing such fully operational CATV System.

g) The OPERATOR shall install and connect the CATV System to one outlet per each unit at the Property Site at the basic rate set forth in the Billing Schedule. In the event a resident desires additional cable television outlets to be installed in the resident's unit, the resident shall notify the

OPERATOR directly and all charges for such additional outlets shall be billed directly by the OPERATOR to the resident requesting same.

h) OPERATOR shall provide all channels and programming set forth in OPERATOR'S cable guide published monthly at OPERATOR'S basic rate as set forth in the Billing Schedule attached. OPERATOR reserves the right to change the channel line-up for any good business reason, provided, however, OPERATOR will provide GRANTOR with the same service OPERATOR provides to other complexes in the City of Houston.

i) The OPERATOR agrees that the CATV System will cause a picture which is consistent with cable industry standards to be seen on television screens for all channels and programming described herein at all times, except during abnormal weather conditions.

j) The OPERATOR agrees that the CATV System shall be maintained in good repair, consistent with standards of the cable television industry and as set forth in this Agreement. OPERATOR agrees that the cost of maintaining the CATV system in good repair shall be at OPERATOR'S expense, unless any repairs to the CATV System are necessitated by the negligent act or omission of GRANTOR, its agents, customers, employees, invitees, trespassers, in which event GRANTOR agrees to pay OPERATOR on demand for any such damages.

k) OPERATOR agrees that cable transmission service shall be provided seven (7) days a week and twenty-four (24) hours a day, provided however, the OPERATOR shall be obligated to provide cable transmission service only to the extent that cable programming or locally broadcast programming is available.

l) OPERATOR shall use OPERATOR'S best efforts to correct and/or repair (and there will no charge for same), any deficiencies in reception caused by faults or defects in the CATV System within seventy-two (72) hours after receiving oral notice of said deficiency from the Association or resident. In the event OPERATOR fails to timely make such repairs or otherwise fails to operate the CATV System as required herein, GRANTOR may notify OPERATOR in writing of such fact and OPERATOR shall have sixty (60) days from receipt of such notice to correct the defect ("Cure Period"). The Cure Period shall be reasonably extended due to acts of God, strikes, shortages, and catastrophes.

m) If, after the expiration of the Cure Period, the OPERATOR has failed and/or refused to correct such defect, GRANTOR at GRANTOR'S sole option, may terminate this Agreement by sending written notice of termination to the OPERATOR.

n) In the event that GRANTOR exercises its option to terminate this Agreement due to the fault of the OPERATOR in accordance with the provisions set forth above then within thirty (30) days after the expiration of the Cure Period, OPERATOR shall remove its equipment (the "Equipment") installed at the Property, including, but not limited to, all transformers, electrical equipment, wiring and cable installed by the OPERATOR; provided, that upon the removal by the OPERATOR of the Equipment, the OPERATOR shall thereafter fully repair and restore at its own expense all portions of the Property from which the Equipment has been removed. At OPERATOR'S election and in lieu of such removal of the Equipment, OPERATOR may within the thirty (30) day period after the expiration of the Cure Period disable the Equipment. In such event, and as soon as OPERATOR has disabled the Equipment, title to the Equipment shall vest to the GRANTOR and OPERATOR shall have no further title or

interest in same. Thereafter, GRANTOR shall be entitled to sell, assign, transfer, remove, or otherwise utilize the Equipment as GRANTOR deems best, at GRANTOR'S sole election. If OPERATOR fails to either remove or disable the Equipment within the thirty (30) day period following the expiration of the Cure Period, then upon the expiration of such thirty (30) day period, title to the Equipment shall in any event vest in GRANTOR.

o) In the event of any termination or expiration of this Agreement, the right-of-way and license that is granted herein shall continue for a period of sixty (60) days thereafter, and shall then terminate or expire. ←?

p) Insofar as the prewiring to some individual units on GRANTOR'S Property may have been repaired or installed by the GRANTOR, OPERATOR assumes no liability for maintenance of such prewiring, nor does OPERATOR make any warrants as to the ability of such prewiring to produce an acceptable signal to each unit.

q) Individual residents of GRANTOR, upon the property site, may subscribe directly with OPERATOR for services not provided to GRANTOR by OPERATOR. GRANTOR is not responsible for the cost of these services.

r) The terms, conditions and covenants contained herein shall apply to, inure to the benefit of, and be binding upon the parties, their successors in interest, and legal representatives.

s) If any provision hereof shall be invalid or illegal or unenforceable, the validity and enforceability of the remainder shall be affected thereby.

t) Any notice required by this contract or by law may be delivered in person or by post by addressing same as follows:

OPERATOR'S ADDRESS

GRANTOR'S ADDRESS

